



---

THE INDEPENDENT  
FOOTBALL OMBUDSMAN

---

## **IFO COMPLAINT REF: 10/09**

### **A FINANCIAL DISPUTE AND ITS CONSEQUENCES AT BURNLEY**

#### **The Role of the Independent Football Ombudsman (IFO)**

1. The office of the IFO has been established by the three English football authorities (The Football Association (FA), The Premier League and The Football League) with the agreement of Government. The IFO has been designated as the final stage for the adjudication of complaints which have not been resolved within football's complaints procedure. The IFO operates a system of non-binding arbitration. In exercising its jurisdiction, the IFO does not seek to question the merits of judgements made by properly constituted Regulatory Commissions and Appeal Boards, unless there were shortcomings in the administrative processes which led to those judgements. It is not the role of the IFO to retry cases, but it is its role to explore and review the procedures under which complaints have been decided and whether the outcomes were reasonable for all parties concerned. Under the procedure agreed by the Football Governing Bodies, the adjudication of the IFO is final and there is no right of appeal against IFO findings.

2. In investigating this complaint, the IFO has received full cooperation from Burnley Football Club, the Football League and the complainant

#### **The complaint**

3. A long-standing Burnley supporter was involved in a financial dispute with the Club relating to the "Chairman's Pledge". He argued that under the pledge he should have been refunded the full cost of his ticket for the 100 Club, a scheme giving access to a special lounge with catering. The Club refunded the price of a basic season ticket in the Bob Lord stand (where seats for the 100 Club are located). The complainant conducted an extended campaign to obtain the full refund and eventually took his case to court. In

the light of this, the Club refused to sell him any match tickets while the dispute was ongoing. The complainant asserted that he was in effect subject to an unreasonable ban.

### **The events in question**

4. As a means of encouraging supporters to purchase season tickets, the Chairman of Burnley Football Club pledged that should the team win promotion to the Premier League, then the club would provide a free renewal ticket for the 2009-10 season (or refund the cost if already purchased). When the Club gained promotion through the play-offs in May 2009, the so-called "Chairman's Pledge" came into operation. Supporters were provided with free season tickets or a refund if they had already purchased season tickets. The Chairman's Pledge cost the Club over £2 million to fund.

5. The pledge was a verbal offer and there was no accompanying definition of what was meant by a season ticket. When the pledge was implemented, a number of "corporate" ticket holders from areas of the ground such as the 100 Club and the Vice-President's Club came forward to request their refunds. The Chairman admitted that he had not intended to include these supporters and had thought only of "normal" season ticket holders, whose tickets provided a match seat only. However, despite this, the Chairman agreed to extend his pledge to these supporters and provided refunds for the cost of a basic season ticket in the Bob Lord Stand. In round terms, this equated to a refund of just under £400 from a total package of about £1100 for those in the 100 Club. Most of these supporters accepted the refund, but a number complained that they should have been refunded the full cost of their package. These complainants were seen individually by the Chief Executive and most accepted the position. The Club reported that one or two declined to purchase similar tickets for the 2010-11 season, but the complainant disputes this and claims that the dissatisfaction was more widespread.

6. The complainant felt that he had a good case for a full refund, having supported the Club for many decades and having spent some £1100 on what was described on his ticket book as a "season ticket". He also pointed out that the advertising leaflets for season tickets included his package along with all others available for purchase. He was in dialogue with the Club by email, post and personal meetings from the autumn of 2009 to the late spring of 2010. He began legal proceedings to recover the full cost of his ticket in July 2010, having unsuccessfully referred his complaint to the Football League in June 2010. The Club incurred legal costs in defending its position and informed the complainant that he would not be allowed to buy tickets for the 2010-11 season unless his demand for a refund was abandoned. The complainant believes that this action, consequent on what he sees as a reasonable refund request, amounts to an unlimited personal ban. He referred his complaint to the IFO for investigation and adjudication in August 2010.

### **The Investigation**

7. The IFO investigation incorporated a full review of the extensive documentation between the complainant and Burnley FC, as well as the correspondence involving the complainant, the Club and the Football League. The IFO was in touch with all three parties by phone, letter and email. The IFO and Deputy met with the complainant on 17

August and visited Turf Moor on 2 September to discuss the case with the Club Chief Executive, who had been personally dealing with the complainant from the outset. The IFO considered further submissions made by the complainant, subsequent to the meeting with him.

## **The Findings**

8. The IFO agrees with the complainant that the complaint involves two related but essentially different topics, the financial dispute with the Club and the action taken by the Club as a result. Accordingly this adjudication deals with the two aspects separately.

9. The financial claim appears to the IFO to be somewhat puzzling at first sight. The complainant says he has been supporting the Club since the 1950s and has for many years taken one of the hospitality packages. Having twice been sent a refund cheque (which has not been cashed), the complainant has persisted with a claim which, in Burnley's view, can only damage the Club which he has so loyally supported over the years. Rather than view the refund offered as a goodwill gesture from the Chairman, the complainant takes a rather legalistic view, believing he has an entitlement to his full refund. The complainant argues that the Chairman's pledge did not exclude any class of season ticket holder and, therefore, he should be refunded the full cost of what is described as his season ticket. In this respect, he cites the 100 Club ticket book, which clearly states that it is a season ticket. He also refers to the Club's publicity leaflet which lists all the season tickets available and which includes the 100 Club as one of the season tickets for sale. The IFO has seen both of these documents. Despite two personal meetings and many telephone calls, letters and email messages the two parties have not been able to agree. The complainant says he offered a compromise based on the price of a matchday ticket, but when this was rejected by the Club he regretfully resorted to the Courts to obtain his refund.

10. The Club acknowledges that the Chairman's Pledge did not specify particular types of season ticket, but maintain that a commonsense approach defines what fans understand by a season ticket, ie the "normal" season ticket which provides a season-long admission to a specific seat or area of the ground. The Club does not believe that the definition of a season ticket would in common understanding include food or hospitality lounge access. Moreover, the Club believes that the Chairman had no intention or need to extend the refund to any hospitality ticketholders. That he did so was a goodwill gesture, not something he was obliged to do by the terms of his pledge, which was not a legally binding contract, a view supported by the Club's legal advisers. The Club asserts that the Chairman's Pledge was in effect a gift and that the receiver of a gift should not determine its value. The Club also argues that it wishes to treat all supporters fairly and equally and will, therefore, not agree to the claim which would give the complainant preferential treatment. They also argue that the costs of legal advice and the management costs involved damage the Club financially and divert scarce resources from other more worthwhile activities such as the youth teams or the service offered to disabled supporters. The Club reported to the IFO that some supporters put their refunds into youth development or charity; some even refused the refund.

11. Since the complainant has resorted to the courts (ie has gone outside football's complaints procedure), the IFO protocol agreed with the Football Authorities precludes the requirement for the IFO to come to a view on this aspect of the complaint. While

respecting the technicalities which the complainant has cited and recognising his right to pursue this case through a sense of entitlement, the IFO notes that the complainant has rejected what was in effect a windfall of nearly £400. However, it will now be for another tribunal to decide whether and to what extent he is entitled to further recompense from Burnley Football Club.

12. In relation to the consequences of the complainant's pursuit of his refund, there is no such limit on the IFO's capacity to judge. From the spring of 2010, the Club made it clear that it would not sell the complainant a ticket while the dispute was ongoing and this was even before the resort to the courts. For example, the complainant was not allowed to renew his 100 Club package at the early-bird discounted price and the deadline passed for this concession and the 100 Club was subsequently sold out, according to the Club, a fact disputed by the complainant. The Club says that the claim challenges the integrity of both the Club and its Chairman and that the complainant is not welcome at the ground and would be refused admission if he arrived at the ground. When pressed by the IFO about whether a personal ban on the complainant was in place, the Chief Executive denied this, but said that the complainant was not welcome and would not be sold a ticket while the dispute continues. The distinction between a ban and refusing to sell a ticket is one which the IFO finds it hard to differentiate. The Club did make an offer which would allow the complainant to return and the Chief Executive wrote that if the legal action were dropped then the Club "will allow you to purchase a (two if required) season ticket for the current season and put you on the waiting list should any corporate packages become available".

13. The Club's position has markedly hardened once it was required to put in a legal defence of the claim to the court. Moreover, it now says that it expects the complainant to reimburse the Club's legal costs before it will lift the "ban". It also asserts that its stance will not alter whether or not the Club is vindicated in court. Just before the IFO completed its investigation, it was hoped that the two parties might meet once more to seek a resolution. However, the planned meeting did not take place and in subsequent correspondence the Club appeared to be suggesting that it might impose an indefinite ban on the complainant, who in turn appealed to the IFO to say if this was fair or reasonable. The Club says it has not yet decided on any formal disciplinary action, pending the outcome of the legal hearing. Meanwhile it will continue to refuse to sell the complainant a ticket and he has not been able to attend any home matches in the 2010-11 season. Since the IFO draft report was written, a further meeting took place in early October. The Club offered a staged reinstatement of the complainant if the legal action was withdrawn. This offer was not accepted.

14. The Club points out that as a private entity it is entitled to refuse admission to any person, a view endorsed by the legal officer of the Football League. That much is not in dispute. Since spectators are the lifeblood of any club, it is rare for supporters to be denied admission where they have not been guilty of any behavioural offence. The Football Supporters Federation (FSF), to whom the complainant turned for advice and support, has recently published a guide to the circumstances in which clubs might impose a ban. It argues that bans should be imposed only for gross misdemeanours, such as criminal violence, racist abuse etc. It does not believe a ban is appropriate where a club and a supporter are involved in a "civil" dispute and no adverse behaviour has occurred. The IFO has some sympathy for this FSF distinction. The Club feels strongly that its interests and reputation have been impaired by the complainant's claim which impugns

the good faith of the Chairman, in particular. The Club's stance is that it does not wish to admit one whose action has, in Burnley's eyes, damaged the Club. However, the complainant has committed no breach of the ground regulations and has not behaved improperly at the Club. Both parties hold their ground as a matter of principle rather than a matter of finance. It may be that relationships can be re-established after a cooling off period and a short term absence from the ground might benefit both parties. However, the IFO finds that a long term or even a *sine die* ban would be excessive and unfair.

#### **15. Conclusion**

The financial dispute between the complainant and the Club will be resolved by the courts and therefore the IFO has no locus to rule on the legitimacy of the claim. Pending the outcome of the legal case, the Club has not yet formally determined its position on any disciplinary penalty it may impose. Taking account of all the circumstances, the IFO concludes that a limited ban might be reasonable. However, any extended or even life-time ban would in the IFO's view be unreasonable and disproportionate. The IFO will monitor the further progress of the case and confirms that, were an excessive penalty to be imposed, then the IFO itself would re-open the case.

**Professor Derek Fraser, Ombudsman**  
**Mr Alan Watson CBE, Deputy Ombudsman**

**20 October 2010**